

DATE: July 21, 2016

TO: Members, Admissions and Education Committee
Members, Board of Trustees

FROM: Elizabeth R. Parker, Executive Director

SUBJECT: TFARR Pro Bono Practice Requirement

EXECUTIVE SUMMARY

Concurrent with staff efforts to modify Task Force on Admissions Regulation Reform (TFAAR) II recommendations based on a Board of Trustee directive to reassess those recommendations' fiscal and human resource implications, Senator Marty Block introduced Senate Bill 1257 (SB1257), legislation that would codify a 50 hour pro bono admissions requirement. Given the legislation's substantial overlap with the pro bono component of TFARR, staff recommends withholding further related Board action pending resolution of the bill. Assuming the bill passes, the State Bar will be responsible for implementing this pro bono program; a description of the program is provided below.

BACKGROUND and DISCUSSION: PRO BONO PRACTICE REQUIREMENT

Original TFAAR II Approach: Prior to admission or by the end of one year following admission, each new admittee must devote at least 50 hours of legal services to pro bono or modest means clients.

SB 1257 Approach: This bill mirrors TFARR recommendations in many ways; noted below are key statutory provisions with TFARR distinctions highlighted where relevant:

- 1) establishes a new admissions requirement mandating 50 hours of supervised pro bono legal service designed "to supplement the applicant's legal education with practical legal work experience;"
- 2) allows for pro bono service in a wide variety of contexts within or outside of California including legal aid organizations; nonprofits; and charitable, civic, community, governmental, or educational organizations;
- 3) requires applicants to certify compliance through submission of a form signed by the applicant and the supervising attorney;
- 4) does not apply to LLM students or applicants who already are admitted to practice in another jurisdiction;
- 5) requires completion prior to admission (the original TFARR proposal allowed for completion through the end of the first year of practice);
- 6) is limited to uncompensated work (the original TFARR proposal allowed reduced-fee legal services as well as pro bono services);

- 7) exempts all out-of-state attorneys without regard to their years of practice (the original TFARR exemption was for out-of-state attorneys who had been admitted and active for four or more years immediately preceding application);
- 8) does not include any exemptions or modifications for individuals who do not fulfill the requirement (the original TFARR proposal allowed applicants to apply for good cause modification of the requirement);
- 9) requires law schools and the State Bar to post information about the requirements and pro bono opportunities on their web sites; and
- 10) includes an explicit requirement for the State Bar to conduct random compliance audits.

A side-by-side comparison of TFARR and SB 1257 is provided as an attachment to this memorandum, as is the legislation itself.

SB 1257 has passed both the Assembly and Senate Judiciary committees. According to the Assembly Judiciary legislative analysis, the bill is supported by the Conference of California Bar Associations, Monterey College of Law, the American Civil Liberties Union of California, and has no opposition on file. The legislative analysis notes that former members of the TFARR provided valuable input on the bill, resulting in more flexible provisions.

If the legislation passes and is signed by the Governor, it would be applicable to all applicants who enter law school on or after January 1, 2018. It would become a statutorily mandated pro bono program for the State Bar to implement. Given that SB 1257 is consistent with both the intent and spirit of the original TFARR recommendations, staff does not recommend pursuing a different or parallel set of recommendations.

In the event the legislation is not successful, staff will come back to the Board with a recommendation for moving forward with a pro bono admissions requirement.

FISCAL/PERSONNEL IMPACT

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RULE AMENDMENTS

Title Provide Title #., Division Provide Division #., Chapter Provide Chapter #.

BOARD BOOK IMPACT

Tab Provide Tab #., Article Provide Article #., Section Provide Section #., Page Provide Page #.

BOARD GOALS & OBJECTIVES

BOARD COMMITTEE RECOMMENDATIONS

Staff is directed to monitor the progress of SB 1257. In the event the legislation passes and is signed in to law, staff is directed to prepare an implementation plan within 180 days of the law's enactment. In the event the legislation does not become law, staff is directed to come back to the Board with a recommendation for moving forward with a pro bono admissions requirement.

ATTACHMENT(S) LIST

- A.** TFARR v. SB 1257 Comparison Chart
- B.** SB 1257

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